IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION: 7.12.2006

Oriental Insurance Company Ltd.

...Appellant.

versus

Parveen and others

... Respondents

CORAM:- Hon'ble Mr. Justice Uma Nath Singh.
Hon'ble Mr.Justice Mahesh Grover.

Present: Mr.Sanjiv Pabbi, Advocate
for the appellant.

UMA NATH SINGH, J. (ORAL)

This FAO by the Insurance Company arises out of an award dated 25.7.2006 passed by learned Presiding Officer, Motor Accident Claims Tribunal, Rohtak, in MACT Case No.106 of 2003, awarding a sum of Rs.1,94,689/- with 7.5% interest per annum in an injury case, where the claimant has suffered 40% permanent disability.

Learned counsel for the appellant-Insurance Company submitted that there is no mention about transportation of onions in the vehicle (being Truck No.HR-46A-9288) by the claimant in the DDR, therefore, the claimant would come in the category of a gratuitous passenger. However, from the cross-examinations of the claimant, it appears that the DDR was not put to him to seek his reply as to why the alleged transportation of onions is not mentioned therein. In this background and also on the basis of the bills of transportation, the

Tribunal has rightly held that the claimant was not a gratuitous passenger but rather, he was accompanying his goods being transported in the vehicle. At this stage, learned counsel informed the Court that an application under Section 170 of the Motor Vehicles Act, 1988 (for short `the Act') to contest the case on merits had been filed on behalf of the Insurance Company in the Tribunal but from the records available with him, he is not in a position to tell the outcome thereof. Had the application been allowed, the order would have been reflected in the award and the appellant-Insurance Company would have been permitted to contest the case on merits. Thus, it appears that the application was not allowed.

Under the circumstances, except the contention of breach of the condition of policy, as discussed hereinabove, no other ground would be available to the appellant company to be urged at the appellate stage before us.

Hence, the FAO, being devoid of merit, is dismissed in limine.

(UMA NATH SINGH)
JUDGE

7.12. 2006
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(MAHESH GROVER)
JUDGE